

FILED

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2 Defendant Pro Se
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BY: 

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6 UNITED STATES DISTRICT COURT
7 CENTRAL DISTRICT OF CALIFORNIA
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9 JORGE ALEJANDRO ROJAS,

10 Plaintiff,

11 v.

12 BOTTOM LINE CONCEPTS, LLC,
13 JOSHUA FOX, UNPLUGGED MEDIA,
14 LLC, and ALEXANDER BYKHOVSKY,

15 Defendants,

Civil Case No.: 2:23-cv-02667-SPG-KS

District Judge Sherilyn Peace Garnett
Magistrate Judge Karen L. Stevenson

16 **DEFENDANT ALEXANDER BYKHOVSKY'S MOTION TO DISMISS**
17 **PLAINTIFF JORGE ALEJANDRO ROJAS's FIRST AMENDED COMPLAINT**
18 **FOR LACK OF PERSONAL JURISDICTION OR IN THE ALTERNATIVE TO**
19 **STRIKE PLAINTIFF'S SERVICE OF PROCESS OF DEFENDANT**
20 **BYKHOVSKY**

22 Defendant Alexander Bykhovsky ("Bykhovsky") moves this Honorable Court to
23 grant his Motion to Dismiss Plaintiff's First Amended Complaint ("FAC") pursuant to
24 Federal Rule of Civil Procedure 12(b)(2) for lack of personal jurisdiction. In the
25



1 alternative, Bykhovsky moves to strike Plaintiff's service of process of Defendant
2 Bykhovsky.

3 **I. INTRODUCTION**

5 Plaintiff fails to state any viable claims under the Telephone Consumer
6 Protection Act, ("TCPA") 47 U.S.C. § 227, against Defendant Bykhovsky for one simple
7 reason: Plaintiff alleges that Bykhovsky is not a citizen of California and Plaintiff does
8 not allege any personal participation in the alleged activities that could conceivably allow
9 this court to exercise jurisdiction over Bykhovsky. This Court does not have personal
10 jurisdiction over Bykhovsky. Bykhovsky is a Panama resident.

11 **II. THE ALLEGED FACTS**

13 Plaintiff alleges he received TCPA-violating phone calls placed by Unplugged
14 Media, LLC. (FAC ¶ 62). Plaintiffs allege these phone calls were prerecorded in nature
15 and also were received by phone numbers registered to the National Do-Not-Call
16 Registry.

17 **III. ARGUMENT – PLAINTIFFS' COMPLAINT FAILS TO ALLEGE**
18 **FACTS DEMONSTRATING THIS COURT HAS JURISDICTION OVER**
19 **BYKHOVSKY**

21 A. Legal Standards Applicable to the Court's Exercise of Personal Jurisdiction
22 Federal Courts may exercise personal jurisdiction over a nonresident defendant so
23 long as state law confers such jurisdiction, and its exercise comports with due process
24 under the Constitution. Due process permits the exercise of personal jurisdiction over a
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1 nonresident defendant where the defendant has purposefully established “minimum
2 contacts” with the forum state such that maintenance of the suit does not offend
3 traditional notions of fair play and substantial justice.” *Int'l Shoe Co. v. Washington*,
4 326 U.S. 310, 316 (1945).

5 Under this standard, the minimum contacts of the nonresident defendant may
6 establish either “general” or “specific” jurisdiction. A Court has general personal
7 jurisdiction over a nonresident defendant “when defendant's affiliations with the state are
8 so continuous and systematic as to render [the defendant] essentially at home in the
9 forum State.” *Daimler AG v. Bauman*, 571 U.S. 117, 127 (2014).

10 Plaintiff bears the burden of establishing a *prima facie* case of personal
11 jurisdiction. Here Plaintiff has not even attempted to make any case that this Court could
12 exercise jurisdiction over Defendant Bykhovsky. Plaintiff does not allege a single
13 sentence in their FAC that accuses Bykhovsky of having any personal involvement at all
14 in the alleged activities. The closest Plaintiff comes to alleging personal involvement in
15 the calls alleged in Plaintiff's FAC is that “Bykhovsky engaged in the operation of the
16 telemarketing scheme.” FAC ¶ 150. This threadbare accusation does not come close to
17 meeting the burden of establishing Defendant Bykhovsky personally participated in the
18 calls alleged herein.

19 Plaintiff does not allege any contact with the State of California by Defendant
20 Bykhovsky. Plaintiff does not allege any contacts with the State of California that were
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1 directed by Defendant Bykhovsky. Due process permits the exercise of jurisdiction over
2 a defendant where the defendant has purposefully established “minimum contacts” with
3 the forum state. There is not a single contact with the forum state that has been alleged to
4 have been made by Defendant Bykhovsky in Plaintiff’s FAC. There is not a single
5 factual allegation contained in the FAC through which Plaintiff has plausibly pled that
6 California can somehow exercise personal jurisdiction over Defendant Bykhovsky, a
7 Panama resident.

10 **IV. BYKHOVSKY IS A PANAMA RESIDENT AND THE INTER-**
11 **AMERICAN SERVICE CONVENTION AND ADDITIONAL**
12 **PROTOCOL MANDATES HOW SERVICE OF PROCESS IS TO**
13 **OCCUR BETWEEN SIGNATORIES TO THE MULTILATERAL**
TREATY

14 Panama is a signatory to the Inter-American Service Convention and Additional
15 Protocol. This is a multilateral treaty between the member nations that includes the
16 United States and Panama. As such, the service of process is governed by an ongoing
17 Treaty. This multilateral treaty outlines the ONLY (emphasis added) ways in which a
18 Panama resident can be served process by a party to the treaty. Plaintiff is required to file
20 form USM-272 Request for Service Abroad of Judicial Extrajudicial Documents Pursuant
22 to the Additional Protocol to the Inter-American Convention on Letters Rogatory.
23 Plaintiff did not follow the process that is mandated by the treaty. Instead, Plaintiff
25 sought relief from the Court and asked for permission to serve Defendant via email

1 Email service was improper under Panamanian law and the Court did not have
2 authority to override the Inter-American Service Convention and Additional Protocol
3 treaty. There was no basis in law for the Court to grant Plaintiff's request to bypass the
4 treaty that governs service of process between the United States and Panama.
5 Furthermore, even if the Court believed it had the authority to override the treaty between
6 the United States and Panama, the Court must do so in a manner that is consistent with
7 Panamanian law. Panama does not allow the service of process via email. Therefore, the
8 Court could not grant Plaintiff's request to serve Defendant via email. Plaintiff
9 respectfully asks the Court to strike the Process of Service as it was improper and
10 violated the multilateral treaty that both the United States and Panama are signatories to.

14 V. CONCLUSION

15 For the reasons set forth above, Bykhovsky respectfully requests that the Court
16 grant his motion to dismiss or in the alternative strike the service of process.

21 Submitted By,



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